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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of VICKI JO and  
STEVEN A. LYMAN.

VICKI JO LYMAN,

Appellant,

v.

STEVEN A. LYMAN,

Respondent.

D073231

(Super. Ct. No. D546274)

APPEAL from a judgment of the Superior Court of San Diego County, Jeannie Low, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Procopio, Cory, Hargreaves & Savitch, Kendra J. Hall, Lionel P. Hernholm and Sarah L. Taylor for Appellant.

Stephen Temko for Respondent.

Vicki Jo Lyman (wife) appeals from a marital dissolution judgment in which the family court found Steven A. Lyman (husband) was entitled to \$2,535,174 in reimbursements under Family Code<sup>1</sup> section 2640 for separate property contributions to their community residence. It was undisputed that the source of at least \$1,291,176 of the contributions was payments from a corporation that had been sold years before the parties' separation and dissolution, of which Steven<sup>2</sup> was the sole shareholder at the time of their marriage. Vicki contends the family court erred by equating the corporation's contributions as Steven's separate contributions. She argues the corporation had a distinct legal status and the corporation, not Steven, was the only potential party with standing to assert a claim for reimbursement under section 2640. Vicki asks that we reverse the judgment to the extent it awards \$1,291,176 in section 2640 reimbursements as "legally unsupported." We affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

The relevant facts are undisputed, based in part on the parties' trial stipulations and other evidence that Vicki does not challenge on appeal, including the amounts of payments for which Steven sought reimbursement and the reasons for as well as the source of those payments.

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<sup>1</sup> Undesignated statutory references are to the Family Code.

<sup>2</sup> For clarity, we refer to the parties by their first names. (*In re Marriage of Vaughn* (2018) 29 Cal.App.5th 451, 453, fn. 1.)

The parties married in March 1996. Before their marriage, they entered into a valid and enforceable antenuptial agreement providing that Steven's "earnings and income and property . . . resulting from his personal services, skill and effort . . . during the marriage shall remain his separate property in the same manner as if the marriage had never been entered into." They also agreed Steven would designate up to \$120,000 per year in salary to be placed into a joint checking account for both parties' use, and all earnings in excess of that would be Steven's separate property. The agreement expressed the parties' intent "after marriage to purchase or build a home, title to which will be taken in both parties' names as community property subject to the provisions of the Family Law Act [sections] 2581 and 2640." At the time they entered into the antenuptial agreement, Steven was the sole shareholder and chief executive officer of a business, Creative Touch Interiors, Inc. (CTI), which Steven valued at \$8 million. Steven testified that the business was an S corporation, so all of its earnings "[f]lowed directly to me."

Shortly after marrying, Steven and Vicki purchased a home in Fairbanks Ranch (the Fairbanks house), taking title jointly as community property. CTI paid \$306,680.59 as a down payment for the house. The home had significant construction defects, requiring major repair work that was performed between 1996 and 1998. Beginning in 2000, the parties extensively remodeled the home. CTI paid for a substantial amount of the repairs and remodeling.<sup>3</sup> CTI's board chairman, Bobby Jack Elkins, handled CTI's finances; he entered data and maintained records of its payments, including amounts CTI

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<sup>3</sup> Vicki identifies this figure as \$984,495.47 toward both the repair and remodel project based on trial exhibits.

paid for Steve's personal expenses, which encompassed the expenses on the Fairbanks house. Both Steve and Elkins were authorized to write checks on CTI's account, and Elkins saw every original check written on CTI's account. CTI treated the work done on the Fairbanks house as a business expense; they were written off against CTI's income in the years they were incurred.

CTI was sold in 2004. Steven sold the Fairbanks house in 2011, generating \$3,894,500 in net proceeds.

Steven and Vicki separated in August 2013, and obtained an order terminating marital status in December 2016. In the dissolution matter, Steven sought to be reimbursed under section 2640 for \$2,953,780 for separate property contributions to the Fairbanks house. Following a 2017 trial on the matter, the family court (Temporary Judge Jeannie Low) issued a final statement of decision. Among other findings, the court found the parties had agreed before marriage that Steven's earnings, income and property resulting from his personal services, skill and effort during the marriage would remain his separate property, and that Steven's \$120,000 yearly salary from CTI was community property. It found the documentary evidence, as well as testimony of several witnesses, supported many of Steven's reimbursement requests, and that he had met his burden to establish his entitlement to reimbursement notwithstanding the fact the funds used for part of the acquisition, and the majority of repair and remodel costs were paid directly from CTI. The court rejected Vicki's arguments to the contrary, finding Steven "was the sole shareholder [of CTI] at the time of all of the expenditures and by the terms of the

parties' [antenuptial] Agreement, the funds used were his separate property." It awarded total section 2640 reimbursements to Steven of \$2,535,174.<sup>4</sup>

## DISCUSSION

### *I. Legal Principles and Standard of Review*

Section 2640 provides in part: "In the division of the community estate under this division, unless a party has made a written waiver of the right to reimbursement or has signed a writing that has the effect of a waiver, the party shall be reimbursed for the party's contributions to the acquisition of property of the community property estate to the extent the party traces the contributions to a separate property source." (§ 2640, subd. (b).) " 'Contributions to the acquisition of property' . . . include downpayments [and] payments for improvements . . . ." (§ 2640, subd. (a).)<sup>5</sup>

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<sup>4</sup> More specifically, the court ruled: "Pursuant to . . . [section] 2640[, subdivision] (a) for the acquisition of the property, Steven shall be reimbursed his separate property contribution in the sum of \$993,633 [*sic*] from the net proceeds of sale. This sum includes the down payment, \$306,681, debt forgiveness including interest to [the prior owner], \$117,320, costs [of] \$8,438 and the subsequent mortgage payoff, \$561,195. [¶] Pursuant to . . . [section] 2640[, subdivision] (a), for the "repair" phase, Steven shall be reimbursed the sum of \$603,094 for those reimbursement requests listed in Exhibit 8, with the exceptions referred to below. [¶] Pursuant to . . . [section] 2640[, subdivision] (a) on the 'remodel' phase, Steven shall be reimbursed the sum of \$938,447 for those reimbursement requests listed in his Exhibit 10, with the exceptions referred to below. [¶] . . . [¶] Total reimbursements due Steven are in the sum of \$2,535,174." The total acquisition cost figure is off by one dollar and should be \$993,634. Neither party raises the point.

<sup>5</sup> The statute further provides: "(c) A party shall be reimbursed for the party's separate property contributions to the acquisition of property of the other spouse's separate property estate during the marriage, unless there has been a transmutation in writing pursuant to Chapter 5 (commencing with Section 850) of Part 2 of Division 4, or a written waiver of the right to reimbursement. The amount reimbursed shall be without

" 'Under Section 2640, in case of dissolution of the marriage, a party making a separate property contribution to the acquisition of the property is not presumed to have made a gift, unless it is shown that the parties agreed in writing that it was a gift, but is entitled to reimbursement for the separate property contribution at dissolution of marriage. The separate property contribution is measured by the value of the contribution at the time the contribution is made.' " (*In re Marriage of Bonvino* (2015) 241 Cal.App.4th 1411, 1432, quoting Cal. Law Revision Com. com., 29D West's Ann. Fam. Code (1994 ed.) foll. § 2640, pp. 136-137.)

The issue presented requires consideration of section 2640 and whether the Fairbanks house payments from CTI's account meet the criteria in that statute for reimbursement. Interpretation and application of a statutory scheme to an undisputed set of facts, as presented here, constitutes a question of law subject to de novo review on appeal. (*Valentine v. Franchise Tax Board* (2001) 87 Cal.App.4th 1284, 1290, fn. 3; *Heller v. Franchise Tax Board* (1994) 21 Cal.App.4th 1730, 1735.) In matters of statutory interpretation, we begin with the statute's language, giving it plain and commonsense meaning. (*Hassell v. Bird* (2018) 5 Cal.5th 522, 540; see *In re Marriage of Walrath* (1998) 17 Cal.4th 907, 917.) "[O]ur ' ' fundamental task . . . is to determine the Legislature's intent so as to effectuate the law's purpose.' " [Citation.] . . . 'We construe statutory language in the context of the statutory framework, seeking to discern the statute's underlying purpose and to harmonize its different components.' " (*Connor v.*

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interest or adjustment for change in monetary values and may not exceed the net value of the property at the time of the division."

*First Student, Inc.* (2018) 5 Cal.5th 1026, 1035; *Webb v. City of Riverside* (2018) 23 Cal.App.5th 244, 252.) " '[W]hen the statute's language is ambiguous or susceptible of more than one reasonable interpretation, [the court may] turn to extrinsic aids to assist in interpretation.' . . . 'Where a statute is theoretically capable of more than one construction we choose that which comports with the intent of the Legislature.' " (*Webb*, at p. 252; see *Walrath*, at p. 918.) In that case, the goal must be to " ' "promot[e] rather than defeat[] the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." ' " (*Walrath*, at p. 918.) Where the statutory language is clear and a literal interpretation does not result in unintended or absurd consequences, courts must generally follow its plain meaning. (*Hassell v. Bird*, at p. 540.)

On appeal, this court presumes the correctness of the judgment or order below. (*People v. JTH Tax, Inc.* (2013) 212 Cal.App.4th 1219, 1259.) " 'All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Lister v. Bowen* (2013) 215 Cal.App.4th 319, 337.) Vicki bears the burden of affirmatively establishing reversible error. (*Marriage of Cochran* (2001) 87 Cal.App.4th 1050, 1056.) To meet this burden, she must support her arguments with legal analysis and demonstrate how the purported errors require reversal. " 'To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error.' '[C]onclusory claims of error will fail.' " (*Lister v. Bowen*, at p. 337.)

## II. Analysis

Here, Vicki does not challenge the family court's finding that payments issued by CTI funded the purchase, repair and remodel of the Fairbanks house, which was a community residence. Nor does she challenge the court's finding that Steven was the sole shareholder of CTI at the time CTI made its expenditures on the Fairbanks house, and she does not, apparently, directly challenge the court's further finding that by the terms of their antenuptial agreement, the CTI payments were Steven's separate property, and that the parties had stipulated before trial that their agreement was valid and enforceable. Vicki does not challenge the court's finding that she and Steven had agreed before marriage that Steven's earnings, income and property resulting from his personal services, skill and effort during the marriage would remain his separate property, with the exception of \$120,000 of his salary, which would be placed in a joint checking account. She does not contest the total amount of CTI's payments.

Rather, Vicki argues the evidence does not show CTI's payments fell within the scope of section 2640 because they were not "contributed by Steven" in that Steven "did not receive any of the funds as a gift, a loan, an advance, distribution, salary, or by any other method of payment." Citing *In re Marriage of Nicholson and Sparks* (2002) 104 Cal.App.4th 289, she argues not all expenditures that facilitate property acquisition are reimbursable. Vicki asserts the evidence shows CTI treated the Fairbanks house as if it owned the house, and points out CTI applied the repair and remodeling expenses as business expenses, which it wrote off against its income in the year the expenses were incurred. She accuses Steven of "tax evasion," which assertedly precludes him from



meeting his burden to obtain section 2640 reimbursement for CTI's payments.<sup>6</sup> Vicki further argues that CTI is a separate legal entity, and maintains the court erred by treating it and Steven as "interchangeable 'persons.' " She argues CTI's sale "operated as a 'writing that has the effect of a waiver' " under section 2640, subdivision (b), preventing Steven from obtaining reimbursement. Finally, Vicki argues CTI was the only potential party with "standing" to assert a reimbursement claim; that a corporation's shareholders have no standing to sue on claims for injury or damage to the corporation and once a stockholder loses his stock ownership, he no longer has standing to pursue claims on the company's behalf.

As we explain, we reject each of these contentions.

1. *Steven's Reimbursement Claim Is Governed by the Antenuptial Agreement*

As stated above, Steven was the owner and sole shareholder of CTI, which was an S corporation. (26 U.S.C. §§ 1361-1379; Rev. & Tax. Code, § 23801, subd. (a).) "An S corporation, like a partnership, does not pay income taxes. [Citations.] Instead, its income and losses are ' "passed through" ' on a pro rata basis to its shareholders, who report those items on their personal tax returns." (*In re Marriage of Morton* (2018) 27 Cal.App.5th 1025, 1032, fn. 3; *Valentino v. Franchise Tax Board*, *supra*, 87 Cal.App.4th

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<sup>6</sup> Vicki's sole authority for her claim of tax evasion is Title 26 United States Code section 7201, which simply criminalizes the willful attempt to "evade or defeat any tax imposed by this title or the payment thereof . . . ." She provides no authority for the notion that CTI's specific conduct in treating its payments as a business expense somehow violated tax laws, or defeats Steven's attempt to obtain reimbursement under section 2640. We disregard her circular assertions because they lack pertinent authority or legal argument. (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830; *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.)

at p.1289; *Heller v. Franchise Tax Board*, *supra*, 21 Cal.App.4th at p. 1733 ["A C corporation is a separate entity which pays corporate income taxes 'according to or measured by its net income.' [Citation.] [¶] In contrast, an S corporation generally does not pay income taxes as an entity. [Citation.] Rather, the S corporation files only an informational return reporting for the taxable year its gross income (or loss) and deductions, its shareholders, and the shareholders' pro rata shares of each item. [Citation.] The items are then 'passed through' on a pro rata basis to the shareholders, who report them on their personal income tax returns. [Citations.] 'The S corporation is, in effect, a Code-created hybrid combining traits of both corporations and partnerships' "].) S corporation shareholders are taxed on their share of the S corporation's income regardless of whether the corporation makes any distributions. (*Heller*, at p. 1734.)

Given's CTI's corporate status and the fact it was taxed as a partnership (*Valentino v. Franchise Tax Board*, *supra*, 81 Cal.App.4th at pp. 1288-1289), monies withdrawn from CTI's accounts constituted personal income of Steven. (*Id.* at p. 1288.) Because Steven and Vicki agreed before marriage that Steven's earnings, income or property resulting from his personal services over and above \$120,000 were his separate property, and Vicki does not claim Steven used any of his \$120,000 community property salary to purchase or pay repairs and improvements on the Fairbanks house or that his earnings did not stem from his personal services, Stevens's use of CTI funds—taxable to Steven as personal income regardless of whether they were actually advanced, loaned, or otherwise distributed to him—permitted him to be reimbursed for the contributions to the

community Fairbanks house under section 2640. Our resolution of the matter begins and ends with the parties' antenuptial agreement.

*2. CTI's Legal Status and Vicki's Claim that CTI's Sale Operated as a "Writing That Has The Effect of a Waiver" Under Section 2640*

We are not convinced by Vicki's various challenges to the family court's reimbursement ruling. The premise of Vicki's argument is that the income of CTI, a separate legal entity, does not belong to Steven unless it was distributed to him in some manner as salary, and cannot be a "separate property source" within the meaning of section 2640. She relies on general principles concerning a corporation's separate legal status as a "person," distinct from its stockholders, officers and directors. She also criticizes the court for "sanction[ing] Steven's use of his separate entity to pay personal expenses and to avoid paying taxes on income and distributions he otherwise would have received."

But as we have explained, CTI's legal status as an S corporation did not prevent its business income from being characterized as Steven's separate property. And courts routinely characterize businesses as separate or community assets for allocating profits and value, even if they are corporate entities. (See *In re Marriage of Koester* (1999) 73 Cal.App.4th 1032, 1037 [observing that the incorporation of a separate property sole proprietorship did not represent "anything other than a mere change in the legal form under which the business was conducted"]; see also *Kenney v. Kenney* (1950) 97 Cal.App.2d 60, 64-66 [stock and all revenues from separate property corporation continued to be separate property of the spouse because community contributed nothing

to the value of the corporate shares]; *In re Marriage of Dekker* (1993) 17 Cal.App.4th 842, 851 [pointing out that rules of apportionment apply "[w]here community efforts increase the value of a separate property business"]; see also 4 Miller & Starr, Cal. Real Estate (4th ed. 2016) § 11:44, p. 11-134 ["When a spouse owns a business or other productive property before marriage, and continues to own and operate it after marriage, such that it produces profits and increases in value, it may be necessary to determine the extent to which the property and the profits are separate property and the extent to which they are community property"; citing cases].) The cases typically involve apportioning profits or value derived from the spouse's separate-property capital and that derived from the services of the spouse after marriage, but here, the parties' antenuptial agreement designated as separate Steven's income and earnings in excess of \$120,000 each year.

Vicki points to no evidence suggesting or establishing Steven improperly reported his income to state and federal taxing authorities; the issue here is not whether Steven complied with tax laws, but whether the family court properly found he traced contributions toward the Fairbanks house to a separate property source so as to entitle him to reimbursement under section 2640. And reliance on *In re Marriage of Nicholson and Sparks, supra*, 104 Cal.App.4th 289 is misplaced; that case involved a spouse's use of separate property to pay down community credit card debts *before* purchasing a residence, payments that the court held bore no relationship at all to the property and were not a contribution to the acquisition of the property within the meaning of section 2640. (*Id.* at pp. 293, 296.) The general principle that not all expenditures qualify as contributions under section 2640 is unhelpful, particularly where it is undisputed that the

payments at issue in this case did in fact contribute to the purchase, repair and improvement of the parties' Fairbanks house.

We reject Vicki's cursory argument that CTI's 2004 sale operated as a "writing that has an effect of a waiver," exempting CTI's payments from reimbursement. According to Vicki, "even if a claim for reimbursement for funds paid by a separate legal entity could be made by Steven, he gave up any rights when he relinquished ownership of CTI."

To fall within section 2640, subdivision (b)'s exemption, the party must have "made a written waiver of the right to reimbursement or has signed a writing that has the effect of a waiver . . . ." (§ 2640, subd. (b).) As Steven points out, Vicki did not litigate the issue of waiver resulting from CTI's sale in the family court; it was her burden to prove any such waiver below (*In re Marriage of Turkanis & Price* (2013) 213 Cal.App.4th 332, 352) and she is precluded from raising such a factual issue—premised on the content of some unidentified writing signed by Steven—for the first time on appeal. (See *Turkanis*, at p. 353 [existence of waiver is a question of fact]; *Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th 729, 745 [whether waiver occurred presents a question of fact]; *In re Marriage of Crosby & Grooms* (2004) 116 Cal.App.4th 201, 212; *Panopulos v. Maderis* (1956) 47 Cal.2d 337, 340-341 [party may not raise new legal theory for the first time on appeal when "the new theory contemplates a factual situation the consequences of which are open to controversy and were not put in

issue or presented at the trial"].)<sup>7</sup> Further, Vicki cites no record evidence that Steven "signed a writing" in connection with CTI's sale, much less evidence that the contents of any particular writing he did sign "ha[d] the effect of a waiver." Apart from this failure of proof, we disregard her contentions for the absence of reasoned legal argument. We conclude in any event that the fact Steven no longer owns CTI is not dispositive; so long as Steven traced his payments toward the Fairbanks house (made between 1996 and 2001) to a separate property source, it is immaterial that years later the source of the payments no longer exists.

### 3. *Steven Had Standing to Assert a Reimbursement Claim*

We finally reject Vicki's contention that Steven lacked standing to seek reimbursement of CTI's payments toward the purchase, repair, and improvement of the Fairbanks home. The threshold issue of standing—a party's right to make a legal claim—is a question of law, particularly where it depends on statutory provisions conferring standing. (*T.P. v. T.W.* (2011) 191 Cal.App.4th 1428, 1433; *Babbitt v. Superior Court of Los Angeles County* (2016) 246 Cal.App.4th 1135, 1143.) In this context, section 2640 confers standing on Steven to seek reimbursement because he is a party who made qualifying separate property contributions (his CTI income) to a community asset: the Fairbanks house. Vicki's contentions relying on general principles of shareholder

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<sup>7</sup> In reply, Vicki argues she adequately raised the issue below by her objections that Steven did not satisfy his burden of proof and that he lacked standing as a result of CTI's sale to seek reimbursement. We do not agree that those objections raised the exemption of a written waiver within the meaning of section 2640, subdivision (b).

lawsuits on behalf of an injured corporation are inapposite to the question of whether Steven has standing under section 2640.

DISPOSITION

The judgment is affirmed.

O'ROURKE, J.

WE CONCUR:

BENKE, Acting P. J.

IRION, J.